6 UKRAINE: INDEPENDENCE, REVOLUTION, DISAPPOINTMENT AND REGRESSION

By Kurt Bassuener, 2008; revised and updated by Iryna Chupryna and Kurt Bassuener, 2010 and 2013

INTRODUCTION

Advocacy for fundamental human and civic rights, as articulated in the Helsinki Final Act, increased considerably in the 1980s in the USSR. Residents of the then Soviet republic of Ukraine were especially and deeply affected by the Chernobyl nuclear disaster in 1986 and the subsequent cover-up. The loosening of strictures on fundamental human freedoms promoted under glasnost allowed these concerns to be articulated, and a growing crop of democratic activists came to the fore. The erstwhile communist leadership of Ukraine declared its independence in 1991, realized following the final dissolution of the USSR in late December of that year. Ukraine was recognized as a new "emerging democracy," though the simultaneous transition from a totalitarian model to a newly independent democracy would be a massive challenge. Ukraine's new leadership, new political parties and civil society all requested assistance in their democratic and market transformations, and this help was forthcoming from early on from the democratic world. Ukraine also proved a willing partner in the efforts to ensure nuclear stability by giving up its nuclear weapons by 1994.

Ukraine held its first democratic presidential elections in 1994, won by rocket scientist and industrial manager Leonid Kuchma, an eastern Ukrainian, after a hard-fought campaign against incumbent — and former communist-era boss — Leonid Kravchuk. Throughout this period, Ukraine continued to receive external support for reform processes, including backing for all manner of civic engagement in public life. It also included technical support for, and observation of, democratic elections,

consistent with Ukraine's obligations as a member of the OSCE and the Council of Europe, to improve, ensure and promote public confidence in the process.

Yet the connection between political and economic power, with the dominance of competing regional industrial "clans," became more apparent, with attendant allegations of senior corruption. Ukraine's star began to fall with much of the democratic world, a trend accelerated by the murder of Georgiy Gongadze, a prominent journalist for the independent Internet publication *Ukrainska Pravda*, who had been investigating official corruption. Soon thereafter, opposition leaders released recordings which they said implicated Kuchma and others in his inner circle in the murder, serving to galvanize a large segment of public opinion against the government.

The 2002 parliamentary elections gave the opposition unprecedented representation. There was relative transparency due to civic efforts to track the vote through exit polls, and the results greatly boosted the democratic opposition. The polarization of the political landscape intensified, with presidential proxy attempts to amend the constitution and flawed by-elections in the western Carpathians in April 2004.

The still-unsolved dioxin poisoning of opposition presidential candidate (and later president) Viktor Yushchenko deepened the polarization of Ukrainian politics. The 2004 presidential election campaign, according to international observers of the OSCE, exhibited numerous instances of bias and abuse by the authorities. The second round, characterized by blatant and systemic fraud, galvanized public protest. Demonstrations began on election night in Kyiv and grew exponentially, drawing large numbers unforeseen by the Ukrainian activists who had anticipated malfeasance and planned the protests. These demonstrations soon snowballed into the Orange Revolution.

The democratic world recognized the importance of helping Ukrainians ensure that the 2004 presidential elections were free and fair. In full view of the Ukrainian authorities, diplomats assisted Ukrainian citizens in monitoring and upholding the democratic process. The cooperation among embassies in this effort was unprecedented. Ukraine's case involves the full array of assets that democratic diplomats have at their disposal, as well as the numerous ways that these can be applied to support civil society and the democratic process.

RESOURCES AND ASSETS OF DIPLOMATS IN UKRAINE, 2004

The G7 democracies began close cooperation to support Ukrainian civil society and the electoral process in 2001, prior to the 2002 parliamentary elections. In 2003, this was formalized in a G7 EU-Canadian-American-Japanese process through their ambassadors in Kyiv, focussed on information-sharing and coordination in

support of free and fair elections, and in alerting home authorities to trends and developments.

These diplomats wielded considerable **influence** in Ukraine, due to their countries' support for Ukrainian statehood and state-building, reinforced by the expressed desire of most of the Ukrainian political spectrum — including the Kuchma administration — to shift Ukraine's orientation toward the West, to the EU and NATO, and even eventually to apply for membership status, all of which elevated the importance of the democracy and governance standards.

The ability to marshal **funds** proved an essential asset in diplomats' efforts to support a transparent and fair electoral process. This included any post funds they could disburse to Ukrainian civil society actors, and also their role in advocating programming by international NGOs and donors, adapted to the flexibility required to operate in a fast-changing environment.

Democratic embassies demonstrated **solidarity** by working together and supporting projects financially and operationally that connected democratic activists from countries that had recent civil society-driven democratic breakthroughs, including Slovakia, Serbia and Georgia, as well as an effort to bring election observers from other countries in transition.

Finally, diplomats had a strong platform of **legitimacy** from which to operate in Ukraine, given the country's obligations to observe clear human rights and democratic standards as a member of the OSCE and the Council of Europe. The OSCE's Copenhagen Criteria provided a regular talking point for democratic diplomats in Ukraine before and during the Orange Revolution. In conjunction with subsequent OSCE statements that threats to stability were not just internal affairs, these provided Western ambassadors a ready riposte to the Ukrainian Ministry of Foreign Affairs' complaints of interference.

WAYS THESE ASSETS WERE APPLIED TO MAKE A DIFFERENCE IN UKRAINE

The above assets were creatively and effectively applied in all the methods enumerated in chapter 3, the tool box chapter of this *Handbook*. Examples of each will be discussed in turn, some of which involve two or even more ways of deploying these assets.

The Golden Rules

Listening, Respecting and Understanding

Diplomats recognized the differing roles and capabilities of partners in the effort to ensure the fairness and transparency of the 2004 election, and, over time, seemed to develop a process that allowed each to play to its institutional strength.

The mechanisms developed in the working-group process (see section on Sharing below) actually seemed to be designed around these realities.

According to a seasoned civil society advocate and former funder, "People need to work together while maintaining their autonomy." One ambassador told a civil society round table when the working groups were launched in early 2004, "You do what you intend to do. Let me know if you come under pressure — I'll help."

In the disbursement of assistance, the relatively small sums managed at post allowed embassies to dispense with procedures that might impede quick reaction. Rather than simply financing training seminars and workshops, diplomats made, facilitated or encouraged grants to enable civic activists to act within their remit. This is not necessarily common.

Sharing

As mentioned above, efforts to share information and coordinate policy approaches on Ukrainian democratic development began in 2001 among G7 members. The Italian and then Dutch EU presidencies took an energetic role in bringing all the EU members into the process. Canadian Ambassador Andrew Robinson chaired the monthly meetings, with the US and EU as co-chairs. Japan remained engaged (and also had observer status at the OSCE). Members came to the process emphasizing different goals for the group: the Americans stressed more coordination, while Canadians and others were more interested in information exchange. According to Ambassador Robinson, these approaches complemented each other.

Truth in Communications

Reporting

Democratic embassies had established relationships with relevant political actors, media and civil society organizations, as well as among themselves. This broad and proactive information collection allowed them to inform and help direct their countries' policies. Canada's diplomats in Kyiv at the time felt that they were able to wield significant influence because of their reporting. Information sources later included election observers in the field, especially the European Network of Election Monitoring Organizations long-term observers, who remained in the field during the revolution when it was unclear whether there would be a continuation to the electoral process.

Informing

In this area, diplomats coordinated their activity to ensure that independent media, such as Internet daily *Ukrainska Pravda,* received sufficient funding to continue its important work of providing uncensored news, including from the embassies' own post funds. The US Embassy made one such grant to editor Yulia Mostova to finance

Dzerkalo Tyzhnia ("weekly mirror"), an Internet publication with serious analytical and investigative pieces, many of which were (and remain) translated into English for an international audience. USAID and the Open Media Fund also supported media monitoring of television content, the prime news source for most Ukrainians. The ODIHR election observation mission publicized its own independent media analysis, showing the strong slant on almost all television networks for the incumbent Prime Minister Viktor Yanukovych and against the opposition candidate Yushchenko, both in quantitative (relative air time) and qualitative (tone) terms.

Working with the Government

Advising

From the advent of Ukrainian independence and democracy, diplomats were engaged in advising both Ukrainian government institutions and civil society actors in democratic governance and economic reform. Much of this engagement was direct, both with governmental actors and with Ukraine's civil society, but it required an even greater mobilization of home authority resources to fund programs.

Dialoguing

On election and governance issues, the OSCE project coordinator office in Ukraine served as a focal point for regular discussions among the civic sector, the Ukrainian government and diplomatic actors. No embassy or government funding or assistance was undeclared; the government could in no way claim to have been uninformed about diplomatic and international donor activity prior to and during the electoral cycle.

Demarching

According to a prominent opposition figure, "The position of the diplomatic corps was taken very seriously by the authorities," and their statements influenced the authorities on numerous occasions throughout the electoral process on the need to adhere to democratic norms to which Ukraine was a party. Two examples stand out.

The first was a reaction to the widely held fear that the mobile phone network would be shut down for the election night vote count, effectively atomizing civic and opposition efforts to coordinate verification and post-election activities. Opposition figures warned the democratic embassies of the threat, and these diplomats played a key role in summoning official reaction from their capitals. EU High Representative for Common Foreign and Security Policy (CFSP) Javier Solana and senior US State Department officials called President Kuchma directly to warn against an engineered communications blackout on election night. The phone networks remained active throughout the election and post-election crisis.

In another instance, taking their cues from their embassies and the ODIHR preliminary statement on November 22, the democratic world coordinated its expression of lack of faith in the second round election results. US Secretary of State Colin Powell stated that the US "cannot accept the…result as legitimate," and called for an investigation into electoral fraud, with consequences for the Washington-Kyiv relationship if this did not occur.

Reaching Out

Connecting

Democratic ambassadors and diplomats were a crucial link between Ukrainian civil society and the full political spectrum in their home countries. Senior opposition campaign staff credited the Polish, US, French and German embassies with helping them connect with NGOs and political figures in their capitals. Such connections proved especially important during the post-election crisis that became the Orange Revolution. According to another senior opposition figure, diplomats also used "their connections with different camps to deliver messages." The embassies facilitated similar links with their home authorities and civic sectors, including with Verkhovna Rada (Parliament) speaker Volodymyr Lytvyn, who played an important role in the post-election crisis round table mediation led by Polish President Aleksander Kwasniewski, Lithuanian President Valdas Adamkus and EU CFSP High Representative Solana.

Opposition figures credit democratic embassies for facilitating an early 2004 conference in Kyiv, which drew from the full Ukrainian political spectrum and many senior external actors; later in the year former US Secretary of State Madeleine Albright adopted and promoted the idea of visa bans and asset freezes on Ukrainians responsible for impeding a fair electoral process. Indeed, prominent Kyiv oligarch and MP Hrihoriy Surkis was denied entry to the US. A long-time Yushchenko adviser summed up the significance of this message to others not yet affected: "you will lose your honestly stolen money" if you try to steal the election. This had "the most effect…even on Kuchma himself."

Convening

Most Western ambassadors hosted dinners at which political actors from across the entire political spectrum met, along with civic leaders, in "open and informal" discussions with political opponents that would not have occurred otherwise.

Facilitating

The opposition attributes the most significant facilitation by external actors in Ukraine not directly to democratic diplomats, but rather to the NDI, a foundation associated with the US Democratic Party, which is funded by the US Congress

through the National Endowment for Democracy. The NDI actively helped to mediate and broker the coalition among Our Ukraine presidential candidate Viktor Yushchenko, the Bloc of Yulia Tymoshenko and Socialist Party leader Oleksandr Moroz. Moroz was the third-place finisher in the first round of the election and possessed valuable party infrastructure in northern and central Ukraine that the Yushchenko team needed for the second round.

US Ambassador Carlos Pascual encouraged NDI and IRI party assistance programs to be open to the full political spectrum. Their popularity even with "parties of power" helped ensure that they could continue activity despite post-2002 government efforts to prevent their registration.

Financing

Democratic embassies engaged in some direct financing of civil society activities related to the electoral process, but the lion's share of external funding for Ukrainian civil society came from development agencies, international NGOs and foundations. Development agencies like Sweden's International Development Agency (SIDA), CIDA and USAID had been fixtures on the donor scene since Ukraine became independent. But local civil society actors note that there appeared to be a lack of strategy and local knowledge in the international donor approach for some time. Gongadze's murder galvanized the political atmosphere. Democratic embassies feared for the integrity of the 2002 parliamentary elections, so the need for greater strategic coordination of donors and policy in support of electoral process was apparent. With training and funding to conduct exit polls for the 2002 elections, "the international community set the bar" for electoral transparency, according to a former ambassador serving at the time.

The diplomatic and donor community put together an array of programs designed to facilitate professional conduct, civic participation and verification of the 2004 presidential elections. According to a key diplomat involved, the level of coordination was "absolutely fantastic." The system functioned as a clearing house, allowing donors to know what others were doing, avoiding duplication and identifying gaps, enabling them to volunteer resources to fill those gaps. The resulting breadth of civil society programs was considerable, including funding for domestic and international election observers, voter education and mobilization, independent media (thereby informing the Ukrainian public), exit polls and parallel vote counts. Eight Western embassies and four NGOs mounted a modestly priced effort to fund exit polls in both original rounds of the election, which was "money extremely well spent," according to Ukraine specialist and historian Andrew Wilson (2005; 2006).

In light of the circumstances, donors demonstrated great flexibility in order to get the job done. Civil society actors remarked that quality project ideas could get funded without inordinate difficulty, though donors shied away from more "sensitive" activities that might be perceived as partisan. Diplomats and civil society figures interviewed stated consistently that funding was granted to support the electoral process, and not given to parties or partisan projects. A Western ambassador and a

senior Ukrainian civil society figure agree that civic groups not explicitly political, such as business development and environmental groups, were as relevant as those with a political focus. The government "didn't get that this was a broad question of civic engagement in public life," according to the diplomat.

In addition, there were considerable efforts to work with the authorities to assist their capacity to conduct a proper electoral process. The Central Election Commission (CEC), lower-level electoral administrators and judiciary all received technical advisory assistance and training.

Showcasing

According to a Ukrainian think tank veteran who worked post-revolution to reform government administration, diplomats are especially well situated to impart the "lessons of democracy," such as the function of coalitions, cohabitation, conflict of interest and legal accountability. "The success of Western assistance was the sharing of knowledge and skills of how democracy works," in her view. Discussion of basic democratic and rule of law mechanics can be very instructive. Diplomats have engaged in round tables on such issues to great effect. Democratic activists from Slovakia, Serbia, Georgia and elsewhere, sponsored by grants from the diplomatic corps and foundations, reinforced a conclusion most Ukrainian democrats had drawn from their own earlier failed protests — that adopting non-violence as a strategic choice is essential to succeed in mass civic mobilization.

Defending Democrats

Demonstrating

Diplomats at all levels demonstrated their solidarity with Ukrainian citizens exercising their right to peaceably assemble by visiting the Maidan (Kyiv's Independence Square) throughout the crisis. "I could see the representatives of all diplomatic missions…this was at the ambassadorial and staff level," recalls a senior opposition logistician on the Maidan. "I saw [embassy] staff taking coffee and sandwiches to demonstrators." In a less visible way, one democratic ambassador called an opposition campaign figure multiple times daily, telling him he did so in the knowledge that his calls were monitored. He wanted the authorities to know that they were in regular contact.

Protecting

Diplomats were among the international observers monitoring the mayoral election in April 2004 in the western town of Mukachevo who witnessed serious intimidation and violence. The OSCE, Council of Europe, European Union and the US criticized these violations. The opposition credits the Czech, Slovak, Polish and

Hungarian embassies with ensuring that the family of opposition candidate Viktor Baloha could escape to safety.

On the night of November 28, 2004, US Ambassador John Herbst heard from both the opposition and from government sources that Interior Ministry troops were being sent to clear the Maidan by force. There was serious potential for violence. Herbst called Washington, and Secretary of State Colin Powell attempted to reach President Kuchma to communicate the message that he would be accountable for any violence that might ensue, while Ambassador Herbst himself passed the same message to Kuchma's son-in-law Viktor Pinchuk and Chief of Presidential Administration Viktor Medvedchuk, regarded by many as the chief advocate of a crackdown. It is impossible to know what factors, in what proportion, tipped the balance in getting the troops to stand down — there were also flurries of messages from Ukrainian Army and secret service officials warning against a crackdown, as well as opposition figure Yulia Tymoshenko meeting with the Army commander. A senior diplomat believes that "perhaps the Army was more important." But these messages no doubt made an impression. "This was a moment when the international community showed solidarity," according to one senior opposition figure.

Witnessing/Verifying

Diplomats not only engaged in their normal observation and reporting duties (including following the proceedings of Ukraine's Parliament, the Verkhovna Rada and the Supreme Court), but also travelled to observe distant campaign events and to investigate alleged abuses of state authority. They observed elections throughout the country, many as part of the International Election Observation Mission, built around the ODIHR mission, and led by a representative of the Council of Europe Parliamentary Assembly. But such witnessing was not restricted to high-profile events: Japanese Embassy personnel were among the observers in a municipal election in the central city of Poltava, and Canadian Embassy personnel observed a by-election to the Rada in Odesa prior to the 2004 presidential poll.

One adviser to former President Yushchenko recalls a bus trip he organized for a cross-section of the diplomatic community to the eastern city of Donetsk, the headquarters and base of Prime Minister and "party of power" presidential candidate Viktor Yanukovych, enabling them to learn first-hand of the difficulties the opposition had in holding events in the east.

In the tense final two weeks before the first round, the government began a new tactic: raiding civil society group offices, planting and then "discovering" explosives, and charging these groups with planning terrorist acts. Civic campaign PORA ("It's Time") offices were raided on October 15 in the first iteration of this approach. On the morning of October 23, security service officers appeared at the home of (Yellow) PORA leader Vladyslav Kaskiv, demanding to be let in to search for weapons. Two opposition MPs blocked the door and prevented a violent entry by using their parliamentary immunity. Three diplomats from the French Embassy and other international representatives from the OSCE, ODIHR and European

Commission arrived to reinforce the MPs and forestall a violent break-in by the security personnel. Their presence had the desired effect: after a number of hours (and consultation with their superiors about how to handle the observers' presence), the authorities withdrew.

EPILOGUE

After many tense moments, the 17-day Orange Revolution succeeded. Mass popular discontent changed the equation, leading state institutions to reassess their roles and responsibilities, often acting independently within their actual constitutional mandates for the first time. The Supreme Court and then Rada determined that the people would have another chance to express their will with minimal interference. Despite the deep-seated tensions in a divided society and concerted efforts to inflame them for political advantage, Ukrainian society as a whole showed remarkable restraint in avoiding violence throughout the crisis. As Andrew Wilson succinctly put it, "it takes two sides to avoid an argument."

The Orange Years

From 2005 on, Ukraine underwent another challenging period. The political infighting and inability of the "Orange forces" to deliver on the promise taxed the sense of many citizens that politics offered avenues for meaningful change. The political situation in Ukraine was often marred by political strife, confrontation and gridlock, most visibly manifest in the open confrontation between two major erstwhile allies and protagonists of the Orange Revolution, Viktor Yushchenko and Yulia Tymoshenko, leading to a succession of unstable governments during Yushchenko's term in office. Arguments between them began on economic policy, but also included the constitutional distribution of powers between the president and prime minister. While some democratic advances of the Orange Revolution were consolidated, other important reform opportunities have been progressively trimmed back or lost.

Despite the squandered opportunity to consolidate the gains of November 2004, under Yushchenko's presidency Ukraine's society enjoyed almost unrestricted freedom of speech and press, freedom of association, and respect for civil and political rights. This was for years the most durable gain for Ukraine's citizens, despite the disappointing and shambolic nature of governance, and has often been underappreciated both by external observers and Ukrainians themselves in light of the disappointment felt over the failure of the "Orange" governments to meet the high expectations set in the winter of 2004-2005. This new political and social climate stood in sharp contrast to the era under President Kuchma, which was marked by increasing censorship, media manipulation and other restrictions on civil freedoms. Yet, although a pluralistic media environment offered Ukrainians a variety of sources of information, major media outlets still remained under the

influence of their private owners and efforts to create professional and non-partisan public television came to naught.

Entangled in political squabbling, Ukraine's political leaders failed to undertake fundamental economic reforms that were long overdue. Hit by a decline in demand for its industrial exports, Ukraine's economy shrank by between 14 and 15 percent in 2009, the largest drop in GDP of any country in the post-Soviet region. In 2008, Ukraine's 22.8 percent inflation rate was the highest in Europe, and the Ukrainian currency, the hryvnia, lost around 60 percent of its value against the US dollar in 2008.

The struggle against deep-seated corruption failed to gain traction — Ukraine was downgraded from 134 in 2008 to 146 in 2009 in the Transparency International Corruption Perceptions Index rankings: at roughly the level of Russia, Zimbabwe and Kenya, and even worse than Armenia, Azerbaijan, Kazakhstan and Belarus.

Ukraine intensified its cooperation with the European Union. However, a clear membership perspective was not on the table, given the EU's need to consolidate previous rounds of enlargement prior to committing to new entrants. Many disappointed Ukrainians believe that the lack of the clear potential for membership negatively affected the impetus for and pace of reforms. Negotiations on an association agreement began in September 2008 as part of the European Neighbourhood Policy, which has been described as an "everything but membership" approach. Additionally, in May 2009, Ukraine — together with Belarus, Azerbaijan, Armenia, Georgia and Moldova — also became a member of the "Eastern Partnership," a new EU initiative spearheaded by new member states. Although the partnership boosts EU-Ukraine cooperation and opens the prospects for a visa-free regime and free trade zone, it lacks the transformative potential on Ukraine's political process that a membership perspective might carry.

In May 2008, Ukraine joined the WTO, a boon to its trade-dependent economy. Membership was also an essential step to the creation of a free trade area with Ukraine's largest trading partner, the European Union. The establishment of a Deep and Comprehensive Free-Trade Area is an integral part of the future agreement. Negotiations are currently at a standstill.

The prospect of NATO membership was much more contentious, both within Ukraine and outside. The idea of NATO membership never captured a majority of the Ukrainian electorate, despite being one of the issues that the "Orange" leaders could all (at least rhetorically) agree about being in the national interest. In January 2008, President Yushchenko, Prime Minister Tymoshenko and Parliamentary Speaker Arseniy Yatseniuk sent a joint letter to then-NATO Secretary-General Jaap de Hoop Scheffer, declaring Ukraine's readiness to advance on a Membership Action Plan (MAP) with NATO. However, at the NATO Bucharest Summit in April 2008, NATO did not grant further MAPs. Following the war between Georgia and Russia in the summer of 2008, the willingness of many NATO members to allow in members from the former Soviet space cooled even more.

Three major election campaigns were held during Yushchenko's presidency. These included elections to the Verkhovna Rada, and local self-government bodies on March 26, 2006; early parliamentary elections on September 30, 2007, and presidential elections on January 17 and February 7, 2010. A historic legacy of the Orange Revolution is that the conduct of all these elections was recognized as competitive, free and fair by international observation missions.

At the first round of presidential elections on January 17, 2010, only five percent of the electorate voted for the incumbent President Yushchenko. His dismal election performance was ascribed to the failure to deliver on fundamental reforms. In the run-off on February 7, 2010, Party of Regions leader Viktor Yanukovych won by more than a four-point margin over then Prime Minister Yulia Tymoshenko.

The European Union and its members, the United States and other Western countries applauded the free and fair election, extending congratulations to Yanukovich. In addition to their senior representatives, Russian President Dmitriy Medvedev also attended the inauguration ceremony on February 25, 2010.

Post Post-Revolution

Following his election, President Yanukovych quickly consolidated his power over the legislative, executive and judicial branches. On March 11, 2010, the new government, headed by long-time Yanukovych ally Mykola Azarov, was endorsed by a parliamentary coalition. Its constitutionality, however, was initially uncertain.

Ukraine's Constitution ascribes a decisive role in the formation of a governmental coalition to parliamentary factions (parties, blocs and alliances) rather than to individual MPs. The three factions that formed the coalition — the Party of Regions, the Communist Party and the Lytvyn Bloc — were seven seats short of a majority, with only 219 of the 450 deputies.

A majority was attained by attracting (opponents allege with financial incentives) individual deputies from opposition parties, the Yulia Tymoshenko Bloc and the Our Ukraine–People's Self-Defence coalition, to the government coalition. On March 9, Ukraine's legislature amended the law on the Parliament, removing a 2008 ban on MPs leaving their factions and allowing deputies to join the coalition individually. According to local press reports, President Yanukovych consulted the ambassadors of the G8 countries (including Russia's envoy, Mikhail Zurabov) about whether their countries would accept a government elected by individual MPs. The ambassadors reportedly advised Yanukovych to obtain a Constitutional Court ruling on the constitutionality of such an arrangement, urging Party of Regions to cooperate with other political forces. President Yanukovych submitted a request concerning the legitimacy of the Azarov government to the Constitutional Court, according to Andreas Umland, political analyst and lecturer at the University of Kyiv-Mohyla Academy, specializing in Ukraine's and Russia's contemporary history.

On April 8, 2010, the Constitutional Court legitimized provisions adopted in the Rada the previous month. Yet, in September 2008, the Constitutional Court, with precisely the same membership, ruled that "only those people's deputies of Ukraine

who are members of the deputies factions that form a coalition can enter the ranks of that coalition." This provision had been adopted — along with the change in the electoral system — to deter "buying" MPs, which had been a hallmark of the Kuchma era. With its 2010 reversal, opponents of Yanukovych and other observers accused the Court of having made a political decision in the interests of the government.

In the three years of his rule, Yanukovych has consolidated his power ever further. Through the Constitutional Court's ruling of September 30, 2010, constitutional amendments, which reduced presidential powers, introduced after the Orange Revolution of 2004, were annulled. This re-established a strong presidency and stripped the Parliament of some powers, such as appointing and dismissing cabinet ministers. Unlike his predecessor Yushchenko, who had to negotiate many decisions with the Parliament, Yanukovych obtained much stronger leverage.

In November 2011, Yanukovych's team adopted a new electoral law for the parliamentary elections scheduled for October 2012. This law changed the existing electoral system, which was built on proportional representation with closed party lists back to a mixed system, in which half of the deputies would be elected by closed party lists, while the other half would be elected in single-member constituencies. The electoral threshold was increased from three to five percent. This marked a return to a past system that engendered a lack of transparency and was criticized for engendering corruption. It also raised the bar for new and smaller political parties.

Accusations of "selective justice" — the arrest and prosecution of the president's political opponents and members of the opposition, have become a major theme in the current Yanukovych administration, as well as a focal point of international diplomatic engagement.

The most resonant case was the arrest and imprisonment of President Yanukovych's archrival, former Prime Minister Tymoshenko. On October 11, 2011, Tymoshenko was found guilty of abuse of office and sentenced to seven years in prison. The charges revolved around an unfavourable gas deal with Russia in 2009, when she served as prime minister. This trial was widely condemned in the West as politically motivated. Tymoshenko was banned from occupying government posts for three years after the completion of her prison term and fined 1.5 billion hryvnias in damages to the state. She appears increasingly unhealthy in prison, alleging and offering evidence of physical abuse. Former Interior Minister and another Orange Revolution leader, Yuriy Lutsenko, was detained on December 25, 2011 while walking his dog. He was arrested on charges of embezzlement and abuse of office for allegedly giving illegal bonuses to his driver. In February 2012, he was sentenced to four years in prison and many observers in Ukraine and abroad considered Lutsenko's trial to also be politically motivated. Interestingly, many of Tymoshenko's most vocal critics within the Orange camp became vociferous critics of her imprisonment.

Diplomatic engagement on this was manifest in a number of different ways. First, diplomats and their home country governments applied pressure on authorities to release Tymoshenko and Lutsenko, as well as other imprisoned members of Tymoshenko's government. Second, diplomats paid personal visits to their trials

and sites of detention. Third, they published letters, articles, interviews and other appeals to Ukraine's authorities on these matters.

Democratic capitals gave the matter significant attention. Prospects of signing the EU-Ukraine Association Agreement were adversely affected: this arrangement with the European Union was linked to release of prominent political prisoners, most recently by EU Ambassador Jan Tombinski, who termed Tyomshenko's imprisonment a "stumbling block" for the deal. Lutsenko was pardoned and released on April 7, 2013, but appeals regarding Tymoshenko have thus far been rebuffed as requests for political interference in judicial matters. On March 4, 2012, five EU foreign ministers — Britain's William Hague, the Czech Republic's Karel Schwarzenberg, Germany's Guido Westerwelle, Poland's Radisław Sikorski and Sweden's Carl Bildt — published an open letter in *The New York Times* pegged to the fifth anniversary of the launch of EU-Ukraine Association Agreement negotiations. In their letter, they emphasized their assessment that processes against Tymoshenko and Lutsenko were politically motivated and were incompatible with Ukraine's aspirations to integrate with Europe.

This was also manifest in Ukraine itself. Numerous EU political figures avoided the Euro 2012 soccer competition held in Ukraine. During the game between Germany and Netherlands, held in Kharkiv on June 13, two German members of the European Parliament, Rebecca Harms and Werner Schultz, displayed banners emblazoned with "Release all political prisoners" and "Fair play in football and politics." In a similar fashion, 14 heads of state refused to participate in a summit scheduled in May 2012 in Yalta for the presidents of Central and Eastern Europe, with some of them explicitly giving the imprisonment of Yulia Tymoshenko as the reason for their unwillingness to attend. The summit was postponed indefinitely. Pat Cox, former president of the European Parliament, and former Polish President Aleksander Kwasniewski co-led a European Parliament monitoring mission to Ukraine beginning in June 2012. They made 15 visits to Ukraine and played an important role in releasing Lutsenko, in particular, by calling on Yanukovych to pardon him.

In 2009, a Ukrainian think tank, the Institute of World Policy (IWP), recognized French Ambassador to Ukraine Jacques Faure (2008–2011) as the most effective diplomat posted to the country. He harshly criticized what he saw as political trials, and was allegedly withdrawn as a result. US Ambassador John F. Tefft is among the most active Western diplomats based in Ukraine, often speaking out "selective political persecution." On October 19, 2012, Ambassador Tefft informed Deputy General Persecutor of Ukraine Renat Kuzmin, that his five-year multiple entry visa to the US had been cancelled. Kuzmin wrote an open letter to US President Obama demanding an investigation. Ambassador Tefft and EU Ambassador Jan Tombinski also called for the ability to visit Tymoshenko in prison in May 2013. Tefft was recognized by the IWP in 2011 as "the first foreign ambassador who even dared to request a visit to Tymoshenko in prison." That same year, he started a new discussion

site, the US Ambassador's Forum, posting discussions on topical issues with the participation of experts from the United States.

Prosecution of Yanukovych's political opponents ahead of the October 2012 parliamentary election was generally viewed in the West as an effort to tip the scales. These elections, held on October 28, 2012, were marked by serious irregularities, especially at the stage of vote counting. The ODIHR observation mission identified cases of preliminary results being changed after they were posted on the CEC website, and there were strong indications that some results have been manipulated in favour of certain candidates. For instance, in electoral district 94, opposition candidate Viktor Romaniuk won over the candidate loyal to the current regime, Tetiana Zasuha; yet Zasuha alleged in the claims that her observers had been denied access to 28 polling stations. Following court rulings, the election results in 27 polling stations (about 30,000 votes) were invalidated by the District Electoral Commission. As a result of these invalidations, Romaniuk lost some 6,500 votes and his victory.

On November 5, the CEC unanimously adopted a decision effectively cancelling the majoritarian elections in five districts and asked Parliament to provide the legal basis for repeat elections. The following day, Parliament decided to recommend that the CEC conduct repeat elections in these constituencies, including electoral district 94.

The years of Yanukovych's regime were remarkable for increasing attacks on press freedom, hitherto one of the most robust and durable benefits of the Orange Revolution. In particular, in the run-up to parliamentary elections on October 28, 2012, one of few independent channels, TVi was removed from major cable TV networks throughout Ukraine. The television station itself suffered under a tax police raid on July 12, 2012. Journalists complained about the recurrence of the censorship of major media outlets. In 2013, the Reporters without Borders global rankings of press freedom, Ukraine slumped to 126 out of 178 countries (down from 116 in 2012). Considering all these factors, it is hardly surprising that Freedom House downgraded Ukraine from "free" to "partially free" in 2011. To date, Ukraine remains in this category.

Yanukovych made a point of making his first presidential visit to Brussels, in pursuit of eventual EU membership (which has never been offered). At the same time, the Yanukovych administration improved Ukraine's relationship with Russia. In a May 2010 visit to Ukraine, his first official visit to Ukraine since his election to the post, Russian President Medvedev signed a controversial deal with Yanukovych to extend the lease of Russian naval facilities in Sevastopol — which had been due to leave in 2017 — until 2042, in exchange for a 30 percent discount on natural gas until 2019. While delivering immediate economic benefits to a deeply depressed Ukrainian economy, including paving the way for the IMF credit, this agreement also raised political, security and constitutional concerns among many Ukrainians — particularly centred on the potential for separatism in ethnic Russian majority Crimea. The Yanukovych government also ceased to pursue NATO membership,

which had been a focal point of the Yushchenko presidency. Recently, Ukrainian Foreign Minister Leonid Kozhara said "It's clear to everybody that at the moment Ukraine's non-aligned status wonderfully combines with European status."

Though Yanukovych initially refused an invitation for Ukraine to join a Customs Union composed of Russia, Belarus and Kazakhstan due to its WTO commitments, talks about possible Ukraine's accession to the Custom Union continue. The Ukrainian leadership has never ruled out potential membership.

In an interview with *Ukrainska Pravda*, EU Ambassador to Ukraine Jose Manuel Pinto Teixeira (in office 2008–2012) assessed Yanukovych's manoeuvring this way: "I think Ukraine is more interested in pretending both before the EU and Russia that it goes in one or other direction. This creates a possibility of bargaining with two parties." Diplomats on the ground have also engaged actively in defence of democratic values. The then Head of the EU Delegation in Ukraine, Teixeira openly criticized Ukrainian authorities on a number of occasions. In an interview given to *Ukrainska Pravda* shortly before he left Ukraine, he criticized Yanukovych for his arbitrary decision on the electoral legislation and selective justice towards Tymoshenko, generating the ire of the Ministry of Foreign Affairs. In its statement, the ministry said that the ambassador was soon to depart his post, and hence his opinion was unworthy of consideration by Ukrainian authorities.

The ambassador had previously engendered harsh reactions from the ministry with his statements. On February 28, 2012, Teixera claimed that Yanukovych reneged on his inaugural speech commitment to improve the business climate. In a press release, the Foreign Ministry noted that the "Ambassador's statements less and less correspond to those statements that diplomats should make." Despite the rebuffs, Teixera remained bluntly outspoken. His position was supported by the EU's External Action Service and member governments, which claimed that criticism against him was unjustified. Western ambassadors in Ukraine explicitly backed him up with a joint statement. In August 2012, the Ambassador also visited Tymoshenko in prison, following repeated denial of access by Ukrainian authorities.

CONCLUSION

Under President Yanukovych, democratic freedoms and achievements of the Orange Revolution in Ukraine have been rolled back ever further. In addition to its direct impact on citizens, it has also been detrimental for the country's European integration prospects, particularly stifling progress toward signing an association agreement and the liberalization of the visa regime with the EU. The role of the diplomatic community both outside and inside Ukraine in putting the country back on track remains vital.

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